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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,808	07/02/2003	Jean-Louis Gueret	62751.000012	5053

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EXAMINER

WALCZAK, DAVID J

ART UNIT PAPER NUMBER

3751

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/611,808	Applicant(s) GUERET, JEAN-LOUIS	
	Examiner David J. Walczak	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/12/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 4,9-14, 19, 24, 27 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 15-18, 20-23, 25, 26, 28, 29 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1. ☒ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/9/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Abstract

The abstract of the disclosure remains objected to because phrases which can be implied, such as "The present invention provides" (see line 1) should not be present therein. Correction is required. See MPEP § 608.01(b). Further, the newly added language "The device also comprises" is considered a phrase which can be implied and therefore should not be present therein.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 23, 26 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Dumler. In regard to claim 23, Figure 9 of the Dumler reference discloses a one-piece coupling member (see paragraph 0035) for coupling two receptacles together wherein the coupling member has two opposed housings 4c, 6c which frictionally engage a respective receptacle 7, 8 and the two housings are not in communication (due to the

wall that separates the housings). In regard to claim 26, one of the receptacles houses an applicator 1 wherein the coupling member is "configured to constitute a handle member" during application. In regard to claim 29, the method as claimed is inherent in the operation of the Dumler device, i.e., the applicators are attached to the coupling member and are accessible upon removal of the receptacles from the coupling member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-8, 15-18, 20-22, 25, 28 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumler in view of Chudy. In regard to claims 1 and 25, Dumler discloses (in Figure 7) two receptacles containing a cosmetic substance wherein each receptacle includes a body 7, 8 and a removable closure cap 4a, 6a and a coupling member 22 that unites the two receptacles in line with each other and comprises two housings therein (the opposite side of the inner area of element 22) which fixedly receive parts of the receptacles. Although the coupling member 22 is not disclosed as being one-piece, the Examiner takes official notice that such tubular coupling members are often formed in one-piece in order to enable the member to be efficiently manufactured. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the connection was made that the coupling member 22 could be

formed as a one-piece element in order to enable the member to be efficiently manufactured. Although the coupling member is not disclosed as being elastically deformable, attention is directed to the Chudy reference, which discloses an analogous threaded coupling member 38 for coupling two receptacles 22, 24 wherein the coupling member is made from an elastic material in order to enable the coupling member to adapt to receptacles of various sizes (column 4, lines 23-25 and Figure 5). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the coupling member 22 in the Dumler device from an elastic material in order to enable the member to adapt to receptacles of various sizes. In regard to claim 2, the threaded fit between the coupling member 22 and the caps defines a releasable and frictional coupling. In regard to claim 3, should elements 4a and 6a be considered the body of the receptacle and elements 7 and 8 be considered the cap, the housing 22 would releasably and frictionally hold the bodies of the receptacles. In regard to claims 5 and 6, the coupling member 38 (and 22) is a single molded element with a non-slip outer surface (as per gripping means 56, column 4, line 50). In regard to claim 7, although the Chudy reference does not disclose that the coupling member is made from foam, the reference does disclose that the coupling member can be made from "any thermoplastic" (see column 4, line 24). As thermoplastic foams are in existence, the Chudy reference meets the limitations of claim 7. In regard to claim 8, the coupling member is cylindrical. In regard to claim 15, the threads in the coupling member define abutments that bear against the receptacles after the receptacles are fitted within the coupling member. In regard to claim 17, the threads in the housing of

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the coupling member define projections. In regard to claim 16, Figure 9 of Dumler discloses a coupling member wherein the two housings are separated by a wall. For the reasons discussed supra, this coupling member can also obviously be made from elastomeric material. In regard to claim 18, although the Dumler reference does not disclose that the coupling member is transparent or translucent, the Examiner takes official notice that materials used to make housings are often made from such a material in order to enable a user to view the elements within the housing. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the coupling member from a transparent or translucent material in order to enable a user to view the contents of the member. In regard to claim 20, each receptacle can have a different substance therein (see paragraph 0030). In regard to claims 21 and 22, applicator members 1 and 2 are secured to the caps 4a and 6a. In regard to claim 28, one of the receptacles houses an applicator 1 wherein the coupling member is "configured to constitute a handle member" during application. In regard to claim 31, the method as claimed is inherent in the usage of the device discussed supra.

Response to Arguments

Applicant's arguments filed 5/12/05 have been fully considered but they are not persuasive. The Applicant contends that the Dumler reference is not applicable to claim 23, since the receptacles in the Dumler device are not held to the housings by friction but by a threaded connection. The Examiner contends, however, that since there is a frictional component (at least to some degree) to threaded connections, the threaded

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connections in the Dumler device enable the receptacles to be frictionally held to the housings, i.e., the two sets of threads which mesh slidably engage each other and thereby there is a frictional component to the securement of the threads. When the threads are turned with respect to each other, the frictional component is overcome by the twisting force and the threads are loosened.

The Applicant further contends that it would not have been obvious to modify the coupling in the Dumler device to be made from elastic material (in view of Chudy) since the Chudy device is concerned with forming a sealed connection and Dumler does not have the problem of sealing. Firstly, viewing Figure 9 of Dumler receptacle 7 would need to be sealingly engaged with the coupling member in order to prevent the leakage of the cosmetic. Accordingly, although not disclosed by Dumler, sealing of the containers would be a concern. Further, as stated above, the Chudy device is made from elastomeric material in order to enable containers are various sizes to be connected. Such a feature would be desirable on the Dumler device in order to enable receptacles of different sizes to be mated. This reasoning has not been addressed by the Applicant and is accordingly upheld in this Office Action. The Applicant further notes that the coupling sleeve of Dumler is too thin to be made from an elastomeric material. As no evidence to support this conclusion has been offered, and the Dumler reference does not disclose the size of the device (we do not know how thin the coupling member is), the Examiner holds that the coupling sleeve of Dumler can be made from such a material, regardless of the size of the member.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
6/25/05